

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PNC BANK, NATIONAL ASSOCIATION, WELLS
FARGO CAPITAL FINANCE, LLC, WELLS
FARGO BANK, NATIONAL ASSOCIATION, BMO
HARRIS BANK, HUNTINGTON NATIONAL
BANK, CATHAY BANK, and BANK LEUMI, USA,

Plaintiffs,

v.

DANA TRANSPORT, INC. and RONALD B.
DANA,

Defendants.

CIV. NO. 16-07797 (RA) (KNF)

**DECLARATION OF STEVE DOLLAR IN SUPPORT OF PLAINTIFFS BMO HARRIS
BANK N.A. AND THE HUNTINGTON NATIONAL BANK'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I, Steve Dollar, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746 as follows:

1. I am a partner with the law firm of Norton Rose Fulbright US LLP, which represents Plaintiffs BMO Harris Bank N.A. ("BMO") and The Huntington National Bank ("HNB") in this action. I am fully familiar with the facts set forth herein based upon my personal knowledge and documents I have reviewed. I make this declaration in support of BMO and HNB's Motion for Partial Summary Judgment on the claims asserted against Defendants Dana Transport, Inc. ("Dana Transport") and Ronald B. Dana (together with Dana Transport, "Defendants," and together with Dana Transport and its affiliates, "Dana"), and for the purpose of placing before the Court certain documents and deposition excerpts cited in the accompanying memorandum of law and statement of undisputed material facts.

2. On October 8, 2015, Dana Transport, certain of its affiliates, and Mr. Dana filed a 435-paragraph, 98-page complaint in this Court against the Lenders¹ and several others. That lawsuit, styled *Dana Transport, Inc. et al. v. PNC Bank, National Association, et al.*, Case No. 15 Civ. 7954 (CM) (“*Dana I*”), alleged wrongdoing by the Lenders in connection with their loans to Dana. Dana asserted thirteen causes of action, including breach of contract, breach of fiduciary duty, RICO violations, and other similar causes of action. Dana sought damages in excess of \$500 million. On November 7, 2015, pursuant to the Court’s order, Dana filed a 55-page Civil RICO Case Statement.

3. On December 11, 2015, the Honorable Colleen McMahon held an initial case conference in *Dana I*. During that conference, Judge McMahon inquired as to whether the Lenders intended to move to dismiss the Complaint, and if so, on what basis. The Lenders responded that they intended to move against the Complaint because the RICO claim was insufficiently pleaded and Dana otherwise lacked federal subject matter jurisdiction; because that claim and all or most of Dana’s other claims were time-barred; and because Dana’s claims were barred by the releases Dana repeatedly signed. Judge McMahon was receptive to the filing of the Lenders’ motions to dismiss and further suggested that they consider filing a motion for sanctions. Dana’s counsel responded that they would be amending the Complaint, and Judge McMahon allowed Dana time to do so. Instead of amending their Complaint, on December 15, 2015, Dana voluntarily dismissed *Dana I*. *Dana I* thus concluded without any judicial determination.

¹ As used herein, the term “Lenders” refers collectively to PNC Bank, National Association, Wells Fargo Capital Finance, LLC, Wells Fargo Bank, National Association, Cathay Bank, Bank Leumi, USA, BMO, and HNB.

4. Despite Dana's voluntary dismissal of *Dana I*, BMO and HNB had already incurred significant legal fees and expenses. BMO and HNB had to retain counsel, who had to analyze the case, begin learning the factual background, conduct legal research on thirteen causes of action, analyze Dana's 98-page Complaint and 55-page Civil RICO Case Statement, begin drafting their motions to dismiss, and prepare for the initial case conference.

5. To date, Defendants have not indemnified BMO or HNB for any fees or expenses they incurred in connection with *Dana I*.

6. As a result, after Defendants failed to respond to a demand letter from PNC on behalf of the Lenders requesting that Defendants honor their indemnification obligations, the Lenders, including BMO and HNB, filed this lawsuit to obtain a recovery against Dana Transport and Mr. Dana.

7. To date, Defendants have not indemnified BMO or HNB for their legal fees and expenses incurred in connection with this lawsuit.

8. Appended to this declaration are true and correct copies of the documents listed in the table below, which correspond to the "Exhibits" identified in BMO and HNB's Memorandum of Law in Support of their Motion for Partial Summary Judgment and Statement of Undisputed Material Facts Pursuant to Local Rule 56.1, filed concurrently herewith.

EXHIBIT	EXHIBIT DESCRIPTION
A	Third Amended and Restated Revolving Credit, Term Loan and Security Agreement dated April 27, 2009 (PNC000001-118).
B	Revolving Credit and Security Agreement dated March 15, 2004 (DANA (NJ Lit) 000001-80).
C	Defendants' Amended Answer, Affirmative Defenses and Demand for Jury Trial in <i>PNC Bank, N.A. et al. v. Dana Transport, Inc. and Ronald B. Dana</i> , Case No. 116-CV-7797, in the United States District Court, Southern District of New York, Dkt. No. 110.

D	Amended and Restated Revolving Credit and Security Agreement dated January 26, 2006 (DANA (NJ Lit) 00081-186).
E	Excerpts from Transcript of the Deposition of R. Deseo in his Capacity as Corporate Representative of the Dana entities in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated October 28, 2020.
F	Excerpts from the Transcript of the Deposition of R. Deseo in his Individual Capacity in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated November 22, 2019.
G	BMO Commitment Transfer Supplement dated March 15, 2006 (BMO_0000358-374).
H	Second Amended and Restated Revolving Credit and Security Agreement dated June 29, 2007 (PNC237210-317).
I	Third Amended and Restated Revolving Credit Note dated August 24, 2007 (PNC246670-673).
J	BMO Commitment Transfer Supplement dated August 24, 2007 (BMO_0001550-561).
K	HNB Commitment Transfer Supplement dated December 12, 2007 (Huntington 0004619-627).
L	Excerpts from Transcript of the Deposition of T. Opie in his Capacity as Corporate Representative of HNB in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated September 1, 2020.
M	Amendment No. 1 to Amended and Restated Revolving Credit and Security Agreement dated September 28, 2006 (PNC025648-672).
N	Amendment No. 2 to Amended and Restated Revolving Credit and Security Agreement dated December 20, 2006 (PNC025626-636).
O	BMO's Responses and Objections to Plaintiffs' First Set of Interrogatories in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated March 25, 2019.

P	HNB's Responses and Objections to Plaintiffs' First Set of Interrogatories in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated March 25, 2019.
Q	Guaranty (Limited/Non-Recourse) dated April 27, 2009 (PNC000145-176).
R	Reaffirmation of Guaranty dated April 27, 2009 (PNC013811-815).
S	Excerpts from Transcript of the Deposition of J. Shin (Day 1) in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated January 13, 2021.
T	Excerpts from Transcript of the Deposition of R. Dana in his Capacity as Corporate Representative of the Dana entities in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated February 10, 2021.
U	Excerpts from Transcript of the Deposition of R. Dana in his Individual Capacity in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated February 9, 2021.
V	Dana's Responses and Objections to Defendants' Second Set of Requests for Admissions in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated November 30, 2020.
W	Dana's Second Supplemental Responses and Objections to Defendant PNC Bank, N.A.'s First Set of Interrogatories in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated January 29, 2021.
X	April 7, 2009 e-mail from J. Shin to R. Dana, R. Deseo, S. Garrick, Y. Youngling, and S. Platzer et al. attaching comments and redlines on draft Third Amended Loan Agreement (DANA00005942-6065).
Y	Silverman Sclar Shin & Byrne PLLC invoice to Dana Transport, Inc. dated April 13, 2009 (DANA00098169-171).
Z	Silverman Sclar Shin & Byrne PLLC invoice to Dana Transport, Inc. dated May 7, 2009 (DANA00098054-057).
AA	Silverman Sclar Shin & Byrne PLLC invoice to Dana Transport, Inc. dated June 12, 2009 (DANA00098231-234).

BB	Compilation of Silverman Sclar Shin & Byrne PLLC invoices to Dana Transport, Inc. (DANA00097923-955).
CC	Retainer Agreement between Silverman Sclar Shin & Byrne PLLC and Dana Transport, Inc. dated March 9, 2009 (SSB-00013121-122).
DD	March 26, 2009 e-mail from J. Shin to R. Dana, B. Kasoff, and J. Youngling attaching clean and marked versions of revised term sheet (DANA00006607).
EE	April 1, 2009 e-mail from J. Shin to R. Dana, S. Platzer, and J. Youngling attaching redlined version of term sheet (DANA00093818).
FF	April 30, 2009 e-mail from J. Shin to R. Dana, R. Deseo, C. Topel, J. Youngling et al. attaching memo setting forth post-closing items (DANA00093774).
GG	Consulting Agreement between RSI and Dana Transport, Inc. dated February 13, 2009, as revised by Dana's independent advisor, J. Youngling (Ex. 10 to the Deposition of J. Youngling).
HH	Compilation of invoices and payments for consulting services provided by Independent Resources, Inc. to Dana (Youngling01618-1653; Ex. 6 from the Deposition of J. Youngling).
II	Excerpts from Transcript of the Deposition of J. Youngling in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated January 11, 2021.
JJ	Consulting Agreement between Independent Resources, Inc. and R. Dana dated August 12, 2008 (Youngling01050-51).
KK	December 11, 2008 e-mail from J. Youngling to R. Dana and S. Garrick et al. requesting meeting with PNC and providing comments on, and responses to, PNC term sheet and attaching original comments dated November 26, 2008 (DANA00008310-314).
LL	Payoff Letter dated January 29, 2013 (PNC000119-130).
MM	Second Amended and Restated Limited Guaranty (Individual) dated June 29, 2007 (PNC223103-112).
NN	Complaint in <i>Dana Transport, Inc. et al. v. PNC Bank, National Association, et al.</i> , Case No. 15 Civ. 7954 (CM) (" <i>Dana I</i> "), in the United States District Court for the Southern District of New York, Dkt. No. 1, dated October 8, 2015.


OO	Civil RICO Case Statement in <i>Dana Transport, Inc. et al. v. PNC Bank, National Association, et al.</i> , Case No. 15 Civ. 7954 (CM) (“ <i>Dana I</i> ”), in the United States District Court for the Southern District of New York, Dkt. No. 69, dated November 7, 2015.
QQ	Order on Consent Letter Motion in <i>Dana Transport, Inc. et al. v. PNC Bank, National Association, et al.</i> , Case No. 15 Civ. 7954 (CM) (“ <i>Dana I</i> ”), in the United States District Court for the Southern District of New York, Dkt. No. 92, dated December 9, 2015.
RR	Complaint, <i>PNC Bank, National Association et al. v. Dana Transport, Inc. and Ronald B. Dana</i> , Case No. 1:16-cv-07797, in the United States District Court for the Southern District of New York, Dkt. No. 13, dated October 5, 2016.
SS	Notice of Voluntary Dismissal filed in <i>Dana Transport, Inc. et al. v. PNC Bank, National Association, et al.</i> , Case No. 15 Civ. 7954 (CM) (“ <i>Dana I</i> ”), in the United States District Court for the Southern District of New York, Dkt. No. 93, dated December 15, 2015.
VV	Hearing Transcript in <i>PNC Bank, National Association et al. v. Dana Transport, Inc. and Ronald B. Dana</i> , Case No. 1:16-cv-07797, in the United States District Court for the Southern District of New York, Dkt. No. 57, dated September 22, 2017.
WW	Hearing Transcript in <i>PNC Bank, National Association et al. v. Dana Transport, Inc. and Ronald B. Dana</i> , Case No. 1:16-cv-07797, in the United States District Court for the Southern District of New York, Dkt. No. 111. ²
XX	Revised Case Management Order in <i>PNC Bank, National Association et al. v. Dana Transport, Inc. and Ronald B. Dana</i> , Case No. 1:16-cv-07797, in the United States District Court for the Southern District of New York, Dkt. No. 146, dated June 16, 2021.
YY	Lenders’ Memorandum of Law in Opposition to Motion to Dismiss Complaint in <i>PNC Bank, National Association et al. v. Dana Transport, Inc. and Ronald B. Dana</i> , Case No. 1:16-cv-07797, in the United States District Court for the Southern District of New York, Dkt. No. 37, dated January 13, 2017.

² Note that while the Transcript on its face is dated September 31, 2018, it was filed on September 14, 2018, and the hearing occurred on August 31, 2018. See Court’s Entry for Dkt. No. 111 (“TRANSCRIPT of Proceedings re: conference held on 8/31/2018 before Judge Ronnie Abrams.”).

ZZ	Excerpts from Transcript of the Deposition of J. Kane in his Capacity as Corporate Representative of BMO in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated January 31, 2020.
AAA	July 15, 2009 email between D. Hickey and S. Garrick (PNC209335-36).
BBB	Excerpts from Transcript of the Deposition of B. Kasoff in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated January 21, 2020.
CCC	Complaint and Demand for Jury Trial in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated April 6, 2016.
DDD	PNC's Motion to Dismiss Plaintiffs' Complaint in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated July 12, 2016.
EEE	BMO and HNB Joinder in PNC's Motion to Dismiss and Supplemental Memorandum of Law in Support of Motion to Dismiss in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated July 12, 2016.
FFF	BMO and HNB's Joinder and Supplemental Reply in Support of Motion to Dismiss in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated October 21, 2016.
GGG	Transcript of Decision on Motions to Dismiss in <i>Dana Transport, Inc. et al. v. PNC Bank, N.A. et al.</i> , Docket No. MID-L-2095-16, in the Superior Court of New Jersey Law Division – Middlesex County, dated June 8, 2018.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: September 24, 2021
New York, New York


Steve Dollar

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2021, I electronically filed Plaintiffs BMO Harris Bank N.A. and The Huntington National Bank's Notice of Motion, Memorandum of Law in Support of the Motion, this Declaration of Steve Dollar dated September 24, 2021, and the exhibits thereto, and Rule 56.1 Statement of Undisputed Material Facts, with the Clerk of the Court using the Court's CM/ECF system, which shall send notice to all counsel of record. I also served copies a Word version of the Rule 56.1 Statement of Undisputed Material Facts on counsel for the parties.

/s/ Steve Dollar

Steve Dollar

Dated: New York, New York
September 24, 2021